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Acting California Corporations Commissioner
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA
10

11 In the Matter of the Accusation of THE)	Case No.: 963-0873
12 CALIFORNIA CORPORATIONS)	
12 COMMISSIONER,)	ACCUSATION
13)	
13 Complainant,)	
14)	
15 vs.)	
16)	
16 DEPENDABLE ESCROW CO.,)	
17)	
17 Respondent.)	
18)	

19 The Complainant is informed and believes, and based upon such information and belief,
20 alleges and charges Respondent as follows:

21 I

22 Respondent Dependable Escrow Co. ("Dependable") is, and at all times relevant herein was,
23 an escrow agent licensed by the California Corporations Commissioner ("Commissioner" or
24 "Complainant") pursuant to the Escrow Law of the State of California (California Financial Code
25 Section 17000 et seq.). Dependable has its principal place of business located at 2001 W. Beverly
26 Boulevard, Montebello, California 90604.
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II

On or about April 19, 2005, Dependable, through its certified public accountant, filed its audited financials for the year ending December 31, 2004 with the Commissioner as required by California Financial Code section 17200. The 2004 audited financial statements for Dependable stated on page 14 “[i]t was noted in reviewing various files that certain disbursements were made from the trust account that appear to be personal in nature. . . .” The 2004 audited financials also contained a trial balance for the period ended December 31, 2004, which disclosed a possible trust account shortage of \$261,497.45. On or about April 22, 2005, the Commissioner commenced a special examination of the books and records of Dependable based upon the information contained in the 2004 audited financials.

The escrow ledgers obtained at the commencement of the special examination included activity through April 21, 2005 and disclosed 35 escrows with debit balances totaling \$533,962.90. The End of Month Exceptions Overdraft report provided for April 30, 2005 included a further \$119,918.67 in debit balances. The special examination eventually revealed that as of April 30, 2004, Dependable had a trust account shortage of \$832,170.22, which had been as high as \$1,022,920.28.¹ The trust account shortage had begun as early as February 2004 and continued climbing into April 2005. The Commissioner believes from documentation reviewed that Dependable has cured the trust account shortage.

Linda J. Chavez, a former manager and escrow officer of Dependable, caused at least \$481,018.84 of the total trust account shortage when she made unauthorized disbursements of trust funds in violation of Financial Code section 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The unauthorized disbursements of trust funds made by Chavez are described in more detail in the Accusation issued against Chavez attached and incorporated herein as Exhibit A.

Close shorts and other reasons caused at least \$163,947.04 of the trust account shortage, which is described in more detail in Section III below.

¹ Not all of the debit balances totaling up to the \$1,022,920.28 will be addressed in this Accusation.

1 The remaining \$190,172.60 of the trust account shortage to be discussed herein was caused
2 by posting errors and thus not a true shortage and is more fully described in Section IV below.

3 III

4 Close shorts and other reasons caused at least \$163,947.04 of the trust account shortage. A
5 sampling of eleven of the debit balances are described as follows:

6 1. Dependable escrow number 0210529

7 On or about February 9, 2004, Dependable over disbursed funds to the buyer by \$1,000.00
8 thereby causing a debit balance of \$1,000.00 in violation of California Code of Regulations, title 10,
9 section 1738.1. The debit balance was corrected on April 26, 2005 when Dependable deposited
10 \$1,000.00 into the trust account.

11 2. Dependable escrow number 0412935

12 On or about January 31 and April 11, 2005, Dependable disbursed funds to pay the termite
13 and escrow fees when there were insufficient funds to the credit of the escrow to cover such
14 disbursements thereby causing a debit balance of \$2,028.62 in violation of California Code of
15 Regulations, title 10, section 1738.1. The debit balance was corrected on May 4, 2005 when
16 Dependable deposited \$2,028.62

17 3. Dependable escrow number 0210617

18 On or about April 15, 2004, Dependable over disbursed funds to the buyer by \$2,351.70
19 thereby causing a debit balance of \$2,351.70 in violation of California Code of Regulations, title 10,
20 section 1738.1. The debit balance was corrected on May 10, 2005 when Dependable deposited
21 \$2,351.70 into the trust account.

22 4. Dependable escrow number 0412016

23 On or about April 7, 2005, Dependable issued a replacement check to the seller without
24 canceling the initial check thereby causing a debit balance of \$2,607.63 in violation of California
25 Code of Regulations, title 10, section 1738.1. The debit balance was corrected on April 22, 2005
26 when Dependable canceled the initial check, which remained outstanding at the time.

1 5. Dependable escrow number 0412176

2 On or about April 6, 2005, Dependable issued replacement checks to the Franchise Tax
3 Board without canceling the initial checks thereby causing a debit balance of \$19,641.60 in violation
4 of California Code of Regulations, title 10, section 1738.1. The debit balance was corrected on April
5 22, 2005 when Dependable issued stop payment orders on the initial checks, which remained
6 outstanding at the time, and deposited \$60.00 into the trust account.

7 6. Dependable escrow number 0412758

8 On or about April 2, 2005, Dependable issued a check in the amount of \$3,829.50 to the
9 Franchise Tax Board in error thereby causing a debit balance of \$3,381.35 in violation of California
10 Code of Regulations, title 10, section 1738.1. The debit balance was corrected on April 22, 2005
11 when Dependable canceled the check to the Franchise Tax Board, which remained outstanding at the
12 time.

13 7. Dependable escrow number 0412783

14 On or about April 6, 2005, Dependable issued two replacement checks without canceling the
15 initial checks thereby causing a debit balance of \$6,270.00 in violation of California Code of
16 Regulations, title 10, section 1738.1. The debit balance was corrected on April 22, 2005 when
17 Dependable canceled the initial checks, which remained outstanding at the time.

18 8. Dependable escrow number 0513075

19 On or about April 21, 2005, Dependable issued three replacement checks without canceling
20 the initial checks thereby causing a debit balance of \$11,008.00 in violation of California Code of
21 Regulations, title 10, section 1738.1. The debit balance was corrected on April 26, 2005 when
22 Dependable canceled the initial checks, which remained outstanding at the time.

23 9. Dependable escrow number 0513121

24 On or about April 21, 2005, Dependable issued duplicate checks to three payees totaling
25 \$14,418.80 thereby causing a debit balance of \$14,418.80 in violation of California Code of
26 Regulations, title 10, section 1738.1. The debit balance was corrected on April 22, 2005 when
27 Dependable canceled the duplicate checks, which remained outstanding at the time.
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On or about April 15, 2005, Dependable issued a duplicate proceeds check to the seller thereby causing a debit balance of \$58,608.80 in violation of California Code of Regulations, title 10, section 1738.1. The debit balance was corrected on April 22, 2005 when Dependable canceled the duplicate check, which remained outstanding at the time.

11. Dependable escrow number 0513179

On or about April 20, 2005, Dependable issued a check in the amount of \$13,186.80 to the Franchise Tax Board in error thereby causing a debit balance of \$13,186.80 in violation of California Code of Regulations, title 10, section 1738.1. The debit balance was corrected on April 22, 2005 when Dependable canceled the check to the Franchise Tax Board, which remained outstanding at the time.

IV

The Exceptions Escrow Overdrafts report provided to the Department of Corporations examiner on or about April 22, 2005 for the period ended April 21, 2005 disclosed 35 escrows with debit balances totaling \$533,962.80. Of those escrows, four were not true debit balances and were caused by disbursements being posted to the wrong escrow in violation of the California Code of Regulations, title 10, sections 1732.1 and 1732.2(a)(1). The debit balances caused by the errors in posting were as follows:

1. Dependable escrow number 0412495

On or about March 1 and 2, 2005, seven (7) checks totaling \$21,103.25 were posted to escrow number 0412495 in error and caused the escrow to appear to be overdrawn by \$19,584.25. The escrow ledger disclosed a debit balance appearing as of March 1, 2005, but Dependable made no efforts to correct the posting errors until after the special examination was commenced on or about April 22, 2005.

2. Dependable escrow number 0412942

On or about April 21, 2005, the cancellation of check number 78786 in the amount of \$4,161.38 was posted to escrow number 0512942 in error and caused escrow number 0412942 to

1 appear to be overdrawn by \$4,161.38. The posting error was corrected by Dependable on or about
2 April 22, 2005.

3 3. Dependable escrow number 0513136

4 On or about March 31, 2005, receipt number 22786 for \$164,416.97 was improperly posted
5 to escrow number 0513038 and caused escrow number 0513136 to appear to be overdrawn by \$164,
6 416.97. The posting error was corrected by Dependable on or about April 28, 2005.

7 4. Dependable escrow number 0513285

8 On or about April 21, 2005, receipt number 22821 for \$2,000.00, which involved a returned
9 deposit item in escrow number 0513281, was adjusted out of escrow number 0513285 in error and
10 caused escrow number 0513285 to appear to be overdrawn by \$2,000.00. The posting error was
11 corrected by Dependable on or about April 25, 2005.

12 V

13 Dependable discovered the misappropriation of trust funds by Linda J. Chavez on or about
14 March 21, 2005, but never reported it to the Commissioner as required by California Financial Code
15 section 17414(c). Instead, the Commissioner learned that trust funds had possibly been
16 misappropriated from the 2004 audited financial statements for Dependable filed on or about
17 April 19, 2005 as described in Section II above. California Financial Code section 17414,
18 subsection (c), requires that any person having knowledge of any abstraction or misappropriation of
19 trust funds must immediately report it in writing to the Commissioner.

20 VI

21 California Financial Code section 17404 provides:

22 Every person subject to this division shall keep and use in its business,
23 books, accounts, and records which will properly enable the commissioner
24 to determine whether the escrow functions performed by such person comply
25 with the provisions of this division and with all rules made by the commissioner
26 under this division.

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California Financial Code section 17414(c) provides in pertinent part:

(c) Any person subject to this division who knows of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner and to Fidelity Corporation. . . .

California Code of Regulations, title 10, section 1732.1 provides:

All receipts and disbursements of moneys shall be posted in the escrow ledger as of the date of such receipts and disbursements, regardless of the date of such posting.

California Code of Regulations, title 10, section 1732.2 (a)(1) provides:

(a) An escrow agent shall establish and maintain currently the following books with reference to its escrow accounts:
(1) Escrow ledger containing a separate ledger sheet for each escrow;

California Code of Regulations, title 10, section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer moneys from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

VII

California Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

...

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

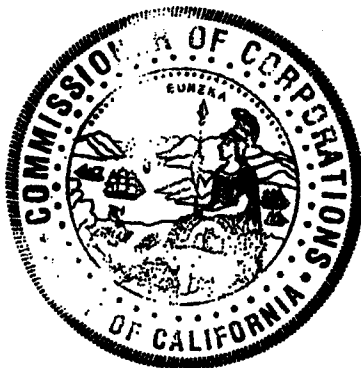
VII

Complainant finds that, by reason of the foregoing, Respondent Dependable has violated California Financial Code sections 17404 and 17414(c) and California Code of Regulations, title 10, sections 1732.1, 1732.2 and 1738.1 and has allowed its business to be operated in an unsafe and injurious manner.

1 WHEREFORE, IT IS PRAYED that the escrow agent's license of Dependable be suspended
2 for a period not to exceed twelve months.

3 Dated: May 16, 2006
4 Los Angeles, CA

WAYNE STRUMPFER
Acting California Corporations Commissioner



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6 By Judy L. Hartley
7 Senior Corporations Counsel
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